

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

05 654

United States District Court		District <u>(Del) Castle County</u>
Name (under which you were convicted): <u>Nyle Boone</u>		Docket or Case No.: <u>0301008114</u>
Place of Confinement: <u>DELAWARE CORRECTIONAL CENTER</u>		Prisoner No.: <u>00250352</u>
Petitioner (include the name under which you were convicted): <u>Nyle Boone</u>		Respondent (authorized person having custody of petitioner): <u>DELAWARE CORRECTIONAL CENTER</u>
The Attorney General of the State of <u>M. JANE BRADY</u>		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: New Castle County Superior Court
- (b) Criminal docket or case number (if you know): 0301008114
- (a) Date of the judgment of conviction (if you know): 7/9/03 (July 9, 2003)
- (b) Date of sentencing: 8/22/03 (August 22, 2003)
- Length of sentence: Twenty Years Level
- In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☒
- Identify all crimes of which you were convicted and sentenced in this case: Robbery
First Degree
- (a) What was your plea? (Check one)

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

FILED

SEP - 6 2005

U.S. DISTRICT COURT
DISTRICT OF DELAWARE

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: SUPREME COURT OF DELAWARE

(b) Docket or case number (if you know): 0301008114

(c) Result: Affirm

(d) Date of result (if you know): MAY 11, 2004

(e) Citation to the case (if you know): Roberts v. State, 2004 WL 1097692 (Del. Supr.)

(f) Grounds raised: (1) TRIAL COURT COMMITTED REVERSIBLE ERROR BY FAILING TO SUSTAIN DEFENDANT'S TIMELY OBJECTION. (2) THE JURY INSTRUCTIONS WERE AMBIGUOUS BECAUSE THEY DID NOT CLEARLY EXPLAIN AS AN ALTERNATIVE DEFENDANT COULD BE CONVICTED OF THIS TRAFFIC ASSAULT THIRD. (3) THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY REFUSING TO INSTRUCT JURY ON DIXON INSTRUCTION. (MAY 11, 2004)

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: New Castle County Superior Court
 (2) Docket or case number (if you know): 0301008114
 (3) Date of filing (if you know): 7/22/04
 (4) Nature of the proceeding: Post Conviction Relief
 (5) Grounds raised: Ineffective Assistance of Counsel (132)

(3) TRIAL COURT Refusing To Give Defendant Proposed Dixon Instruction

- (6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Appeal

(8) Date of result (if you know): 1/18/05

- (b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: State Of Delaware Supreme Court
 (2) Docket or case number (if you know): 0301008114
 (3) Date of filing (if you know): 4/10/05 or 4/11/05
 (4) Nature of the proceeding: Appeal Of Post Conviction
 (5) Grounds raised: Ineffective Assistance of Counsel (132)

(3) TRIAL COURT Refusing To Give Defendant Proposed Dixon Instruction

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: APPEAL

(8) Date of result (if you know): (8/12/05) - AUGUST 12, 05

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Ineffective Assistance of Counsel

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

COUNSEL FAILED TO INVESTIGATE PRIOR INCONSISTENT STATEMENT. COUNSEL FAILED TO BRING INCONSISTENCIES TO THE ATTENTION OF THE JURY. STATEMENT MADE AT POLICE OFFICE'S INITIAL INTERVIEW VERSUS TESTIMONY GIVEN AT TRIAL.

- (b) If you did not exhaust your state remedies on Ground One, explain why: _____

- (c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel is not allowable on a direct appeal.

- (d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction

Name and location of the court where the motion or petition was filed: New Castle

County Court (Superior)

Docket or case number (if you know): 0301008114

Date of the court's decision: 1/18/05

Result (attach a copy of the court's opinion or order, if available): SUMMARY
Dismissed (Better explained, withered reviewed)
(claimed to the extent I raised a new claim)

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: State Of Delaware
Supreme Court

Docket or case number (if you know): 0301008114

Date of the court's decision: 8/12/05

Result (attach a copy of the court's opinion or order, if available): Appeal (Barred)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO: Ineffective Assistance Of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel failed to object to defendant being
sentenced under a fraudulent predicate felony
(Possibly to deliver cocaine) for habitual offender
motion (2003) sentencing.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective

Assistance of Counsel is not Allowable on direct
Appeal.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction Relief

Name and location of the court where the motion or petition was filed: New Castle

County Superior Court

Docket or case number (if you know): D301008114

Date of the court's decision: 1/18/05

Result (attach a copy of the court's opinion or order, if available): Summary
Dismissed

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: State of Delaware

Supreme Court

Docket or case number (if you know): 0301008114

Date of the court's decision: 8/12/05

Result (attach a copy of the court's opinion or order, if available): Affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: TRIAL COURT COMMITTED REVERSIBLE ERROR In Refusing To Give Defendants Proposed Dixon Instruction.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

TRIAL COURT ERRED by not allowing Defendant Proposed Dixon Instruction, when in fact there was evidence (testimony) given that supported Defendant's theory. Victim/Witness gave testimony that Defendant was not in possession of a pair of blue jeans, then recanted the testimony on cross.

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction

Name and location of the court where the motion or petition was filed: New Castle County Court (Superior)

Docket or case number (if you know): 0301008114

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Was not addressed by Superior Court for whatever reason. (Ignored)

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: State Of Delaware Supreme Court

Docket or case number (if you know): 0301008114

Date of the court's decision: 8/12/05

Result (attach a copy of the court's opinion or order, if available): Affirmed (Bazzer)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

Therefore, petitioner asks that the Court grant the following relief:

Reversed
Demanded or modified to the lesser included of
Theft 1st and Assault Third or Vacated

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on

AUGUST 30, 2005 (month, date, year).

Executed (signed) on AUGUST 30, 05 (date).

Kunal Boudel
Signature of Petitioner

*(...continued)

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Certificate of Service

I, Nyke Boane, hereby certify that I have served a true
and correct cop(ies) of the attached: Writ of Habeas Corpus,
Superior & Supreme Courts decisions upon the following
parties/person (s):

TO: Clerk, U.S. District
Court
844 N. King St.
Wilmington, Del.
19801

TO: _____

TO: _____

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United
States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 30th day of August, 200

(5) Five

1/M Kyle Boone
SBI# 250352 UNIT 17B-1

DELAWARE CORRECTIONAL CENTER

1181 PADDOCK ROAD

SMYRNA, DELAWARE 19977

Clerk, United States District Court.

Central Court Bldg.

844 N. King St.

Wilmington,

DELAWARE.

19801

U.S.M.S.
X-RAY

LEGAL
MAIL

